IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/08/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.22246 OF 2002
AND
W.P.M.P.NOs.30708, 30709 OF 2002
and WVMP.NO.789 OF 2002

K. Umapathy,
S/o. A.V. Krishnamoorthy .. Petitioner

-Vs-

1. Airports Authority of India,
International Airports Division,
represented by the Airport Director,
Chennai Airport,
Chennai 600 027.

2. Assistant general Manager
(Comml), AAI (IAD),
New Administrative Block,
II floor, Chennai 27. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.R. Thyagarajan,
Senior Counsel for
Mr.R. Ravichandran

For Respondents 1-2 : Mr.R. Krishnamurthy
Senior Counsel for
Mr.V.S.R. Hanu Babu Koka

:J U D G M E N T

Petitioner has filed this writ petition for quashing Clause No.3 in the tender call notice issued by the respondents and published in newspaper, The Hindu, dated 10.5.2002.

2. The aforesaid notice inviting tenders had been issued by the Airports Authority of India,Chennai for management of car park services at

Kamaraj Domestic Terminal and Anna International Terminal. Relevant provisions of Clause 3 of the said tender notice is to the following effect :-

 3. The parties fulfilling the following criteria are eligible to purchase the tender document/participate in the tenders:

For Sl.No.1(A): Parties having experience of 2 years in managing a car Park with Government Agencies/ Public Sector/ 5 & 4 Star Hotel/Hospital/Municipal Corporation/Airport/Sea port/ Railways/ Bus Terminals and having minimum annual Turnover of Rs.1.05 crores from similar business.

For Sl.No.1(B): Parties having experience of 2 years in managing a car Park with Government Agencies/ Public Sector/ 5 & 4 Star Hotel/Hospital/Municipal Corporation/Airport/Sea port/ Railways/ Bus Terminals and having minimum annual Turnover of Rs.1.57 crores from similar business.

For Sl.No.2 : Omitted as not relevant.

3. The aforesaid clause, particularly clause relating to minimum annual turnover, is according to the petitioner arbitrary and got no reasonable nexus with the matter relating to settlement of such rights. It has been asserted that the said clause has been included with a view to continue the monopoly of the present licensees and to prevent others like the petitioner from submitting their tenders. Such clause has the effect of depriving the persons, who are not already in business, from participating in the tender process and is likely to reduce the number of offers, ultimately resulting in loss to the respondents.

4. A counter affidavit has been filed on behalf of the respondents wherein it is indicated that previously such licenses had been issued for two years relating to both terminals, namely the Domestic terminal as well as the International terminal. It has been indicated that clause-3 of the notice is for ensuring participation of experienced persons with sufficient turnover so that the operation relating to parking of cars can be managed smoothly by the contractor. Assertion to the effect that the notice inviting tenders would only entitle persons carrying such business in the Airport is not correct inasmuch as, as per the said notice the persons having experience in managing car park with Government Agencies, Public Sectors, 5 & 4 Star Hotel, Hospital, Municipal Corporation, Sea port, Railways, Bus Terminals are entitled to participate in the said tender. The requirement relating to minimum turnover as indicated is relatable to the business carried on in the previous years and has got a reasonable nexus. It has been indicated that the present license fee was Rs.21,79,000/- and for better

management it was thought fit to split the car parking into two parts and the turnover indicated has got nexus to such figures.

5. Learned senior counsel appearing for the petitioner has vehemently contended that for running a car park, no technical experience is required, and therefore, there is no necessity to insist two years experience in the management of car parking. It is further contended that the requirement relating to having minimum annual turnover cannot be fulfilled by any person save and except those who have got the license for the previous year and this clause has been included with a view to help such persons and with a view to exclude others.

6. Learned counsel for the petitioner has placed reliance upon several decisions of the Supreme Court to the effect that even an administrative action can be challenged on the ground of arbitrariness and in the present case, the condition imposed being arbitrary should be quashed.

7. It is not necessary to notice all such decisions as there is no quarrel with the proposition of law enunciated in various Supreme Court decisions cited. The question to be decided is as to whether incorporation of the condition extracted above is arbitrary.

8. Insistence in Clause 3 regarding experience cannot be said to be arbitrary. The contention that such condition has no nexus to the question of management of car parking cannot be accepted. If the Airport authorities thought that persons experienced in the management of car parking would be better suited to manage the car park near the domestic terminal and the international terminal, such decision cannot be characterised as irrelevant or arbitrary. □Experience□ required is relating to management of any car park area in many places such as Government Agencies, Public Sectors, 5 & 4 Star Hotel, Hospital, etc., and is not confined to persons who have such experience in car parking area in Airport. Therefore, tender notice is not aimed at excluding all, but is aimed at receiving applications from experienced persons for better management of the parking area.

9. Learned senior counsel has also vehemently contended that insistence of annual turnover at a particular level is also aimed at excluding others. This also does not appear to be justified because turnover may be in any similar business and is not confined to car parking business only. Even though the clause relating to experience is confined to management of car parking with Government Agencies, Hospital, Public Sectors, 5 & 4 Star Hotel, Sea port, Municipal Corporation, Railways, Bus Terminals, the minimum turnover indicated is not confined to such business of managing a car park, but is relatable to turnover □ from similar business□.

10. The expression □similar□ as per Oxford Dictionary means as follows :-
□ similar - of the same kind in appearance, character or quantity, without being identical.□

The expression □similar□ as per Webster□s New World Dictionary means

as follows :-

 similar Nearly but not exactly the same or alike; having a resemblance.

11. The expression used is similar, but not same.
Therefore, the apprehension that it is only aimed at making eligible the persons already in business of managing car parking within the Airport does not seems to be justified.

12. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed subject to the observations made. No costs. Consequently, the connected miscellaneous petitions are closed.

Internet : Yes
Index : Yes
dpk

To

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